

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE AUSTIN CAPITAL MANAGEMENT, LTD.  
SECURITIES & EMPLOYEE RETIREMENT  
INCOME SECURITY ACT (ERISA) LITIGATION  
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09md2075

**ORDER**

CONSTRUCTION INDUSTRY & LABORERS  
JOINT PENSION TRUST and PLUMBERS &  
PIPEFITTERS UNION LOCAL 525 PENSION  
PLAN, On Behalf of Themselves and All Others  
Similarly Situated,

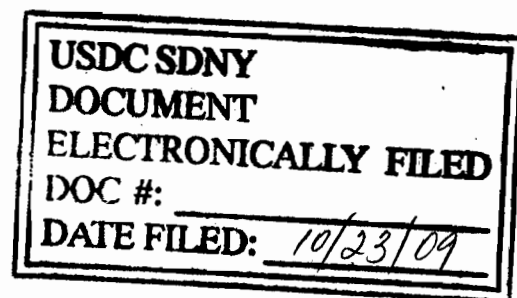
Plaintiffs,

- against -

09 Civ. 3614 (TPG)

AUSTIN CAPITAL MANAGEMENT, LTD.,  
CHARLES W. RILEY, BRENT A. MARTIN,  
JAMES P. OWEN, ROBERT WAGNER, DAVID  
C. BROWN, DAVID E. FRIEDMAN,  
ROTHSTEIN, KASS & COMPANY, P.L.L.C.,  
ROTHSTEIN, KASS & COMPANY (CAYMAN),  
and DOES 1-100,

Defendants.



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PENSION FUND FOR HOSPITAL &  
HEALTH CARE EMPLOYEES—  
PHILADELPHIA & VICINITY and HENRY  
NICHOLAS, On Behalf of Themselves and All  
Others Similarly Situated,

Plaintiffs,

- against -

AUSTIN CAPITAL MANAGEMENT, LTD.,

Defendant.

09 Civ. 7134 (TPG)

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AUSTIN CAPITAL MANAGEMENT, LTD.,	:	
AUSTIN CAPITAL MANAGEMENT GP CORP.,	:	
CHARLES W. RILEY, BRENT A. MARTIN,	:	
JAMES P. OWEN, MONTGOMERY "BUCK"	:	
GREEN, KYLE MCDANIEL, and JAY W. VAN	:	
ERT,	:	
	:	
Plaintiffs,	:	
- against -	:	09 Civ. 7135 (TPG)
	:	
THE BOARD OF TRUSTEES OF THE TEXAS	:	<b><u>ORDER</u></b>
IRON WORKERS' PENSION FUND and THE	:	
TEXAS IRON WORKERS' PENSION FUND,	:	
	:	
Defendants.	:	
-----X		
RICHARD PESHKIN, On Behalf of Himself as	:	
an Individual, on Behalf of Spectrum Select	:	
L.P. as a Limited Partner, and on Behalf of All	:	
Others Similarly Situated,	:	
	:	
Plaintiff,	:	
	:	
- against -	:	08 Civ. 11183 (TPG)
	:	
TREMONT GROUP HOLDINGS, INC.,	:	
TREMONT PARTNERS, INC., RYE	:	
INVESTMENT MANAGEMENT,	:	
OPPENHEIMER ACQUISITION	:	
CORPORATION, OPPENHEIMER FUNDS INC.,	:	
MASSACHUSETTS MUTUAL LIFE	:	
INSURANCE COMPANY, ROBERT I.	:	
SCHULMAN, JIM MITCHELL, JOHN V.	:	
MURPHY, KPMG L.L.P., BANK OF NEW YORK	:	
MELLON CORPORATION, BNY ALTERNATIVE	:	
INVESTMENT SERVICES, INC., SELECT	:	
SPECTRUM PARTNERS, LLC, and JOHN	:	
DOES 1-100 INCLUSIVE,	:	
	:	
Defendants.	:	
-----X		

### **ORDER OF CONSOLIDATION**

On August 11, 2009, in accordance with 28 U.S.C. § 1407, the Judicial Panel on Multidistrict Litigation formed MDL No. 2075, In re Austin Capital Mgmt., Ltd. Secs. & Employee Ret. Income Sec. Act (ERISA) Litig. The J.P.M.L. aggregated four cases pending in the Southern District of New York, the Eastern District of Pennsylvania, and the Western District of Texas based on its determination that common questions of law and fact pervaded concerning whether Austin Capital Management and other defendants improperly made investments that ultimately resulted in losses caused by Bernard L. Madoff.

The Court held a hearing on the record on October 22, 2009 addressing issues regarding consolidation and the appointment of lead plaintiffs and lead attorneys, and has rendered decisions reflected in this order.

#### **NOW THEREFORE IT IS HEREBY ORDERED THAT:**

1. Pursuant to Fed. R. Civ. P. 42(a) and Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78u-4(a)(3)(B)(ii), this court finds that these cases should be consolidated for pretrial proceedings.

2. Pursuant to Section 21D(a)(3)(B) of the Exchange Act, 15 U.S.C. § 78u-4(a)(3)(B), Operating Engineers Trust Funds, Sheet Metal Workers' National Pension Fund, and International Brotherhood of Teamsters Local 705 Pension Fund are appointed Lead Plaintiffs, and the law firms

of Coughlin Stoia Geller Rudman & Robbins LLP and Hagens Berman Sobel Shapiro LLP are appointed Co-Lead Counsel for plaintiffs.

3. Courtesy copies of all correspondence and filings shall be provided to the assigned judge, Judge Thomas P. Griesa.

4. A copy of this Order shall be placed in the dockets for all the cases listed herein. The Clerk of the Court is directed then to close the docket in 09 Civ. 3614 (TPG), 09 Civ. 7134 (TPG), and 09 Civ. 7135.

5. The Clerk of the Court is directed to sever Count XIV of Richard Peshkin, et al. v. Tremont Group Holdings, Inc., et al., 08 Civ. 11183, for consolidation with this action.

6. Any document hereinafter filed in connection with the above-captioned cases must be filed under the MDL case number, 09md2075.

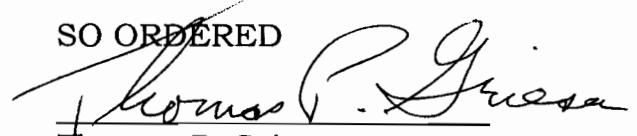
7. If a case that arises out of the same subject matter is hereinafter filed in this court or transferred to this court from another court, but the Clerk of the Court has not been informed that it relates to this action, counsel in any of the consolidated cases shall inform the Clerk's Office of any related case that comes to their attention. The Clerk's Office will then notify Judge Griesa, who shall take whatever action is deemed appropriate.

8. As to any case accepted by Judge Griesa as related, the Clerk's Office will consolidate that case with this action unless an objection to such consolidation is duly made and is sustained by the judge.

9. Once the newly-filed or transferred case is consolidated with this action, the Clerk of the Court is directed to close the docket of that newly-filed or transferred case.

Dated: New York, New York  
October 22, 2009

SO ORDERED



Thomas P. Griesa  
U.S.D.J